

State of Vermont  
Department of Corrections  
NOB 2 South, 280 State Drive  
Waterbury, VT 05671-2000  
[www.doc.vermont.gov](http://www.doc.vermont.gov)

[phone] 802-241-2442  
[phone] 802-241-0000  
[fax] 802-241-0020

*Agency of Human Services*

August 22, 2019

Brian Waters  
MuckRock News  
Dept MR 79099  
411A Highland Ave  
Somerville, MA 02144-2516

**Re: Record Request #32986**

Dear Mr. Waters:

The Vermont Department of Corrections has received your request for records. The Department's response is included below.

1. Policies, procedures, guidelines, flow charts, rubrics, or other documents that explain how the risk determinations are reached.
  - a. A search was done and Directives, Interim Memo, and APA Rule have been provided related to risk determination.
  - b. There are assessments/documents available, however, there is a need for the Department to "search for and collect the requested documents," and for "consultation." See 1 V.S.A. § 318 (b)(5)(A)-(C). Therefore, the Department expects to respond on or about August 30, 2019
2. Any legal analyses or reports regarding risk assessment, including those by your Department's General Counsel, or the State Attorney General.
  - a. A search was done and the record does not exist under the name given or by any other name known to the custodian. See 1 V.S.A. § 318 (b)(4).
3. If software is involved in the risk determination, please include all documentation for the software, as well as any RFP's put out for software, all responsive bids, and the contract signed with the vendor/winning bidder.
  - a. A search was done and the record does not exist under the name given or by any other name known to the custodian. See 1 V.S.A. § 318 (b)(4).

Sincerely,



Charles Remick  
Records Management Specialist



**Directive 371.09 Designation Of Listed Offenses**

**STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
DEPARTMENT OF CORRECTIONS**

**Directive: 371.09**

**Subject:** Designation Of Listed Offenses

**Effective Date:** 12/30/02

**Review and Re-Issue Date:**

**Supersedes:** 3/1/02

**APA Rule Number:**

<b>Recommended for approval by:</b> Richard Turner, Director/Correctional Services		<b>Authorized By:</b> Steven Gold, Commissioner	
Signature	Date	Signature	Date

**1. Authority:**

- 1.1. Title 28 V.S.A., Chapter 1 - Section 1(a-c) – Section 2a, Chapter 3 – Section 101 (1), Section 102 (c) (1) (3) (4) (5) (8), Chapter 6, Chapter 11 – Section 701, Section 701a, Section 701b, Section 702, Section 703, Section 706, Section 721 – 726, Section 808, Title 13, V.S.A., Chapter 165, Section 5301

**2. Purpose:**

- 2.1. To provide a list of the statutorily listed crimes and other violent crimes that the Department of Corrections has determined that meet the rationale that established the listed offenses. For purposes of classification these are referred to as the Listed Offenses.

**3. Applicability/Accessibility**

- 3.1. All individuals and groups affected by the operation of the department may have a copy of this directive.

**4. Directive**

- 4.1. The classification process commences when an incarcerated offender has been convicted of one or more statutorily listed offenses outlined below, or any of the violent crimes that the Department of Corrections has determined that meet the rationale that established the listed offenses. See appendix A, attached.
- 4.2. The CSS staff assigned to the case determines if the offender has been convicted of one or more of the following offenses described in 13 VSA Section 5301 (7), or any of the violent crimes listed in appendix A:

1. stalking as defined in section 1062 of 13 VSA;
2. aggravated stalking as defined in subdivision 1063(a)(3) or (4) of 13 VSA;
3. domestic assault as defined in section 1042 of 13 VSA;
4. first degree aggravated domestic assault as defined in section 1043 of 13 VSA;
5. second degree aggravated domestic assault as defined in section 1044 of 13 VSA

## **Directive 371.09 Designation Of Listed Offenses**

6. sexual assault as defined in section 3252 of 13 VSA or its predecessor as it was defined in section 3201 or 3202 of 13 VSA;
7. aggravated sexual assault as defined in section 3253 of 13 VSA;
8. lewd or lascivious conduct as defined in section 2601 of 13 VSA;
9. lewd or lascivious conduct with a child as defined in section 2602 of 13 VSA;
10. murder as defined in section 2301 of 13 VSA;
11. aggravated murder as defined in section 2311 of 13 VSA;
12. manslaughter as defined in section 2304 of 13 VSA;
13. aggravated assault as defined in section 1024 of 13 VSA;
14. assault and robbery with a dangerous weapon as defined in subsection 608(b) of 13 VSA;
15. arson causing death as defined in section 501 of 13 VSA;
16. assault and robbery causing bodily injury as defined in subsection 608(c) of 13 VSA;
17. maiming as defined in section 2701 of 13 VSA;
18. kidnapping as defined in section 2405 of 13 VSA or its predecessor as it was defined in section 2401 of 13 VSA;
19. unlawful restraint in the second degree as defined in section 2406 of 13 VSA;
20. unlawful restraint in the first degree as defined in section 2407 of 13 VSA;
21. recklessly endangering another person as defined in section 1025 of 13 VSA;
22. violation of abuse prevention order as defined in section 1030 of 13 VSA, excluding violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);
23. operating vehicle under the influence of intoxicating liquor or other substance with either death or serious bodily injury resulting as defined in section 1210(e) and (f) of Title 23;
24. careless or negligent operation resulting in serious bodily injury or death as defined in section 1091(c) or (d) of Title 23;
25. leaving the scene of an accident with serious bodily injury or death as defined in section 1128(b) or (c) of Title 23;
26. burglary into an occupied dwelling as defined in section 1201 (c) of 13 VSA; and
27. The attempt to commit any of the offenses listed in this section.

### **5. Training Method**

- 5.1. It is the responsibility of Superintendents at facility and field sites to ensure that all CSS staff are fully trained in the application of this directive. HRD will develop case planning training curricula to support this directive.

### **6. Quality Assurance Processes**

- 6.1. The Director of Classification will conduct annual audits of this directive at each CCSC and facility. The Director will identify report compliance issues and report to the Director of Correctional Services.

### **7. Financial Impact:**

- 7.1. Most correctional programming is intended for offenders convicted of listed offenses. If the number of listed offenses is increased the referrals to programming will be increased. All costs associated with providing needs reducing programming will also increase.

### **8. References**

- 8.1 Title 28 V.S.A

### **9. Responsible Director and Draft Participants**

Ray Flum, Director of Classification

The following are violent crimes that the Department of Corrections has determined that meet the rational that established the listed offenses:

1. Abuse of Disabled Adult – as defined in section 6913 of 33VSA
2. Arson 1<sup>st</sup> degree – as defined in section 502 of 13 VSA
3. Assault Law Enforcement 2<sup>nd</sup> – as defined in section 1028, (2) of 13 VSA
4. Accessory Arson
5. Possession Deadly Weapon During Felony – as defined in section 4005 of 13 VSA
6. Hate Crime – as defined in section 1455 of 13 VSA
7. Use of a Child in a Sexual Performance Title 13 V.S.A § 2822
8. Consenting to a Sexual Performance Title 13 V.S.S § 2823
9. Promoting a Recording of a Sexual Act Title 13 V.S.A §2824
10. Possession of Child Pornography Title 13 § 2827 and meeting penalty requirements in Title 13 V.S.A § 28259(c)(2)(d)
11. Use of Electronic Communications to Lure a Child 13 V.S.A § 2828
12. Careless or negligent operation resulting in serious bodily injury or death as defined in section 1091(b) of Title 23;

The commissioner has authority to add to this list as future review of cases would dictate that they meet the same rational that establish the listed offenses.

**Directive 371.10 Level C Designation For Offenders Convicted Of Listed Offenses**

**STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
DEPARTMENT OF CORRECTIONS**

**Directive: 371.10**

**Subject:** Level C Designation For Offenders Convicted Of Listed Offenses

**Effective Date:** 12/30/02

**Review and Re-Issue Date:**

**Supersedes:** 3/1/02

**APA Rule Number:**

<b>Recommended for approval by:</b> Richard Turner, Director/Correctional Services		<b>Authorized By:</b> Steven M. Gold, Commissioner	
_____ <b>Signature</b>	_____ <b>Date</b>	_____ <b>Signature</b>	_____ <b>Date</b>

**1. Authority:**

- 1.1. 28 V.S.A., chapter 1 -section 1(a-c) – section 2a, Chapter 3 - section 101 (1), section 102 (c) (1) (3) (4) (5) (8), Chapter 6, Chapter 11 – section 701, section 701a, section 701b, section 702, section 703, section 706, section 721 – 726, section 808, 13 V.S.A., chapter 165, section 5301

**2. Purpose:**

- 2.1. Consistent with 28 VSA § 1(b) and with the goal of providing Vermont's citizens safety from violent crime, this directive;
- 2.1.1 Applies evidence-based and validated assessment procedures to determine risk and program needs of offenders convicted of statutorily listed crimes and other violent crimes that the Department of Corrections has determined that meet the rational that established the listed offenses;
- 2.1.2 Identifies offenders whose offense is egregious and whose risk for future violence is high.

**3. Applicability/Accessibility**

- 3.1. All individuals and groups affected by the operation of the department may have a copy of this directive.

## **Directive 371.10 Level C Designation For Offenders Convicted Of Listed Offenses**

### **4. Directive**

- 4.1. Level C designation is reserved for those inmates whose listed offenses are egregiously harmful and who are assessed as high risk for future violent criminality. In considering a Level C recommendation the CSS should review the instant offense and consider the following:
  - 4.1.1 The offender used violence or threats of violence on the victim;
  - 4.1.2 The harm to the victim was severe;
  - 4.1.3 The behavior towards the victim was characterized by cruelty, brutality, or wanton callousness
- 4.2. In order to proceed with a Level C designation the following steps need to be followed by the CSS in preparing a case for this designation:
  - A. The offender must be convicted of a Listed Offense as defined in directive 371.09.
  - B. The crime must be determined as egregious by use of the "Egregious Form" see (Appendix A)
  - C. The offender must have a score of 24 and above on the LSI
  - D. The offender must have a score of 7-9 on the VRAG
  - E. A case staffing review will be held and a decision will be made (Appendix B)
- 4.2.1 If an inmate is convicted of multiple crimes, the most serious ones should be considered for Level C designation eligibility.
- 4.2.2 Offenders must have a score of 24 and above on the LSI, and a score of 7-9 on the VRAG to support the assessment of high risk for future violent criminality.
- 4.2.3 The CSS shall determine whether the crime meets Level C criteria after reviewing the information contained on the "Egregious Form" see (Appendix A). If the LSI score is 24 or above and the Egregious Form is completed and at least one box in section 1, 2, and 3, is checked on the form, then the Director of Classification will have the VRAG assessment completed.
- 4.2.4 If the VRAG score is 7-9, the Director of Classification will schedule a case staffing to proceed with the process of Level C designation.

## **Directive 371.10 Level C Designation For Offenders Convicted Of Listed Offenses**

- 4.3 It is the responsibility of the Superintendent to review Level C materials prepared by the CSS and determine if the criteria have been met. He/she shall then submit a Case Staffing Review report to Director of Classification containing the relevant documentation ( Egregious Form, Level C designation form and supporting reports) and placement recommendation. The Director of Classification will review the material and schedule a case staffing review. The Director of Correctional Services shall make a final determination concerning Level C designation based on the facts submitted and the entirety of the case. (Appendix B)
- 4.4 Inmates with Level C designation shall be reviewed by facility and central office classification review teams upon initial classification, the expiration of the minimum sentence and every two years thereafter.

### **5. Training Method**

- 5.1. It is the responsibility of Superintendents at facility and field sites to ensure that all CSS staff are fully trained in the application of this directive. HRD will develop case planning training curricula to support this directive.

### **6. Quality Assurance Processes**

- 6.1. The Director of classification will conduct annual audits of this directive at each CCSC and facility. The Director will identify report compliance issues and report to the Director of Correctional Services.

### **7. Financial Impact:**

- 7.1. The cost associated with level C offenders is long term incarceration. This will cause an increased cost over time. The minimal number of these cases mitigates the impact.

### **8. References**

Title 28 V.S.A.

### **9. Responsible Director and Draft Participants**

Ray Flum, Director of Classification

**Egregious Form**

Offender Name:

DOB:

Conviction of Listed Offense:

Please check the appropriate boxes. In order to recommend a Level C Classification, at least one box in each of Sections 1, 2 and 3 must be checked. You should check more than one box in any section, if multiple items apply

**1. Did the offender use violence or use threats of violence on the victim?****VIOLENCE**

- ☐ **Restrained** the victim, e.g. kidnapped, tied up, held down, and dragged.
- ☐ Use of **physical violence** against the victim, to include but not limited to hitting, biting, shaking, bruising, shoving, kicking, tripping, punching, twisting, strangling, hitting with other objects, burning, breaking bones, throwing to ground and/or down stairs, stabbing or shooting.
- ☐ The act of poisoning, to include poisoning by drugging
- ☐ Use of **sexual violence** with or without a weapon against the victim to include but not limited to rape, sodomy, pedophilia, gang rape, other forced acts, sadistic sexual acts, etc.

**THREATS OF VIOLENCE**

- ☐ Used a **weapon** to threaten or coerce the victim.
- ☐ Verbally **threatened to use a weapon** against the victim, or the victim's family, friend, etc.

**2. Was the harm inflicted substantial?**

- ☐ Victim suffered, or (likely suffered\*) substantial physical and/or emotional trauma as a result of the crime (to include but not limited to acts of physical violence, lost consciousness, deep cuts, injury requiring hospitalization, injury requiring extended or extensive medical care, being hit in abdomen during pregnancy, emotional distress, heightened anxiety, depression, fears of retaliation and/or additional violence from the offender if released, etc.
- \*likely suffered is used in absence of evidence regarding the detail of the crime's impact or input from the victim
- ☐ Please list any additional factors, not identified above, that indicate that the harm to the victim(s) was substantial:
  - ☐ Victim died as a result of the crime.



**3. Can the behavior and/or the intent of the crime be characterized as particularly cruel, brutal or demonstrating wanton callousness?**

- ☐ The victim was particularly vulnerable, due to age, infirmity, or reduced physical/emotional or mental capacity
- ☐ The harm was planned in advance or pre-meditated and /or occurred over a lengthy period of time.
- ☐ Evidence of torture. to include but not limited to practices meant to inflict pain, i.e. burning, cutting, inserting objects, depersonalized violence, bizarre forms of violence, sadistic acts, etc.
- ☐ The offense involved multiple violent acts to the victim.
- ☐ If violent behavior occurred during the commission of the crime, did the violence go beyond what was needed to carry out the crime? i.e., violence was disproportionate to intent of the crime.
- ☐ The offender used his or her status or position to facilitate the commission of the offense. This includes positions of trust, confidence or fiduciary relationships.
- ☐ The offense was random, predatory, or arbitrary in nature
- ☐ Please list any other factors, not identified above, that indicate that the behavior or intent of the crime was particularly cruel, brutal or demonstrated wanton callousness:

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This offender meets the criterion for an egregious offender.

Prepared by \_\_\_\_\_ Date \_\_\_\_\_  
**Corrections Services Specialist**

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I believe that the information contained in this report supports the offender being classified as an egregious offender.

\_\_\_\_\_  
**Superintendent**                      Date                      Site

**LEVEL C DESIGNATION FORM**

Offender Name:

DOB:

Sentence:

Min Rel Date:

Max Rel Date:

**Level C Criteria**

1) Conviction of Listed Offense:

2) LSI Score:

3) Egregious Criteria met:      yes / no

In answering these questions three elements are to be considered:

1. The offender used violence or threats of violence on the victim.
2. The victim experienced harm that was substantial.
3. The behavior by the offender was characterized by cruelty, brutality or wanton callousness.

4) VRAG Score:

5) Case Staffing Date:

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***To be completed by the Director of Correctional Services***

I have determined that the information in this case supports a Level \_\_\_\_\_ classification.

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**Director of Correctional Services**

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**Date**

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**The plan as of this staffing is as follows:**

Offenders with Level C designation shall be reviewed by facility and central office classification review teams upon initial classification, the expiration of the minimum sentence and every two years thereafter.

**Directive 371.11 Level C Performance Expectations**

**STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
DEPARTMENT OF CORRECTIONS**

**Directive: 371.11**

**Subject:** Level C Performance Expectations

**Effective Date:** 12/30/02      **Review and Re-Issue Date:**

**Supersedes:** 3/1/02      **APA Rule Number:**

<b>Recommended for approval by:</b> Richard Turner, Director/Correctional Services		<b>Authorized By:</b> Steven M. Gold, Commissioner	
_____ <b>Signature</b>	_____ <b>Date</b>	_____ <b>Signature</b>	_____ <b>Date</b>

**1. Authority:**

- 1.1. 28 V.S.A., chapter 1 -section 1(a-c) – section 2a, Chapter 3 – section 101 (1), section 102 (c) (1) (3) (4) (5) (8), Chapter 6, Chapter 11 – section 701, section 701a, section 701b, section 702, section 703, section 706, section 721 – 726, section 808, 13 V.S.A., chapter 165, section 5301

**2. Purpose:**

- 2.1. Consistent with 28 VSA § 1(b) and with the goal of providing Vermont's citizens safety from violent crime, this directive:
- 2.1.1 Identifies offenders whose offense is egregious and whose risk for future violence is high.;
- 2.1.2 Develops a strategy to manage these offenders to limit their risk of violence to the community.

**3. Applicability/Accessibility**

- 3.1. All individuals and groups affected by the operation of the department may have a copy of this directive.

**4. Directive**

- 4.1. Due to the nature and seriousness of their crimes and risk of violent reoffending, offenders designated as Level C are subject to different performance expectations. In these cases the Department considers public safety and incapacitation as primary factors.
- 4.1.1 Case planning for Level C offenders will generally focus on long term confinement. Due to the nature of their offenses, victim harm and high risk profile these offenders must demonstrate long-term behavioral and psychological stability, commitment to change, and completion of significant treatment goals prior to any release consideration. In these cases, the burden of demonstrating these objectives lies with the offender, and the Department will use the maximum release date, less six months, as the reference for case planning purposes.

## **Directive 371.11 Level C Performance Expectations**

- 4.1.2 Case planning and program placement decisions for Inmates with Level C designation will be done through the central office case staffing process. Once the case staffing has occurred the assigned CSS will meet with the offender to discuss the expectations and requirements. It shall be incumbent on the offender to seek out treatment and program opportunities, make a compelling case for admission to the program by virtue of institutional behavior and intention, and complete the full set of program expectations.
- 4.1.3 Placement in correctional treatment programs could be considered after the offender has served his minimum sentence, his behavior has been exemplary, and the Parole Board has reviewed the case and indicated that parole would be considered after program completion. If all of these factors are in place a central level staffing will be held to determine when the offender will be considered for program placement.
- 4.1.4 Institutional Behavior – Exemplary behavior over an extended period of time is required of the Level C offender. This will take the form of consistently high work ratings from facility job supervisors, the absence of disciplinary reports, avoidance of negative inmate subculture activities, (i.e, engaging in or encouraging behavior that is detrimental to the orderly running of a correctional facility , including, but not limited to: gang affiliation, extortion, drug use/sales.), and evidence of pro-social conduct or citizenship within the institution.
- 4.1.5 Failure to sustain the expectations described above will be seen as a negative indicator for release.
- 4.1.6 Program Completion - Offenders with Level C designation must fully address the criminogenic risk and need areas associated with their criminal conduct prior to release from custody. This standard requires achievement of treatment goals in the relevant programs, avoidance of program suspensions, and sustained excellence in pursuing their program objectives. Based on the nature and severity of their crimes, Level C offenders may be required to participate in multiple programs to address multiple need areas.
- 4.1.7 Because of the degree of harm perpetrated by Level C offenders against their victims, the Department will require these offenders to demonstrate an acceptance of their responsibility for their crimes and consequences in the course of treatment. This shall be seen in restorative activities, atonement and efforts directed at positive citizenship in addition to normal relapse prevention and related clinical activities. The treatment plan shall address ways in which the offender can demonstrate a high level of rehabilitative effort and achievement.
- 4.1.8 Classification Review - Correctional facility superintendents shall develop a process for evaluating the overall performance of the Level C offenders. In preparation for the two-year review described in Directive 371.10, the input of facility security supervisors, casework personnel, clinical providers and line staff shall be gathered and integrated.
- 4.1.9 Eligibility for Release – Level C offenders must be in compliance with all the requirements described above prior to consideration for release. Upon satisfaction of these requirements, the offender may request a meeting with the Level C Offender Review Panel Composed of the Facility Superintendent, Director of Offender Classification, the Director of Correctional Services, the Director of Clinical Services, the Director of Victim Services, and the field managers of the jurisdiction in which the offense(s) was committed and the location of the proposed release plan. This panel reviews and recommends approval/disapproval of conditional release, furlough or parole.
- 4.1.10 Level C offenders released into the community shall remain under Community Correctional Services Center (CCSC) supervision for the duration of their sentence or until they are deemed incapable of further criminal conduct due to serious physical infirmity.
- 4.1.11 Parole Consideration - When a Level C offender is eligible for parole and appears before the Board, the Department shall provide a detailed review of the individual's assessed criminal risk, institutional conduct and correctional treatment. The Board shall be appraised of the reasons for the offender's Level C designation and provided with additional information as requested.

## **Directive 371.11 Level C Performance Expectations**

### **5. Training Method**

- 5.1. It is the responsibility of Superintendents at facility and field sites to ensure that all CSS staff are fully trained in the application of this directive. HRD will develop case planning training curricula to support this directive.

### **6. Quality Assurance Processes**

- 6.1 Each site manager will establish a local procedure.

### **7. Financial Impact:**


- 7.1. The cost associated with level C offenders is the cost of long term incarceration. Given the public safety issues with these offenders we feel this is a good use of our resources.

### **8. References**

- 8.1 Title 28 V.S.A.

### **9. Responsible Director and Draft Participants**

Ray Flum, Director of Classification

<b>STATE OF VERMONT</b> <b>AGENCY OF HUMAN SERVICES</b> <b>DEPARTMENT OF CORRECTIONS</b>	<b><u>INTERIM MEMO:</u></b> <b>RELEASE OF SEX OFFENDERS FROM A CORRECTIONAL FACILITY INTO THE COMMUNITY UPON COMPLETION OF THE OFFENDER'S MAXIMUM SENTENCE</b>	<b>Page 1 of 1</b>
<b>Local Procedure(s) Required:</b> No. <b>Applicability:</b> All staff (including contractors and volunteers) <b>Security Level:</b> "B" – Anyone may have access to this document.		
<b>Approved:</b> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 50px;"> <div style="text-align: center;">   <hr/> <b>Andrew A. Pallito, Commissioner</b> </div> <div style="text-align: center;"> <u>2/23/15</u>  <hr/> <b>Date Signed</b> </div> <div style="text-align: center;"> <u>2/25/15</u>  <hr/> <b>Date Effective</b> </div> </div>		

Pursuant to 13 V.S.A. §5404(b) the Department of Corrections (DOC) requires Facility Caseworkers to complete the following protocol prior to the release of a sex offender into the community who will be completing their maximum sentence.

1. Thirty (30) days prior to maximum release the Facility Caseworker will ask the offender to provide their anticipated address upon their release, and notify the offender of his or her obligation to report to the Department of Public Safety to register as a sex offender. Additionally, the Facility Caseworker shall advise the offender that failure to register with the Department of Public Safety prior to release is a crime. Facility Caseworkers shall have the offender complete the *Vermont Sex Offender Registry Notification of Requirement to Register* form. If the offender fails to provide an address then the Facility Caseworker must file an affidavit describing the refusal with the State's Attorney who obtained the conviction, with a copy to the Vermont Crime Information Center (VCIC).
2. Five (5) days prior to maximum release the Facility Caseworker will ask the offender to affirm their previously provided address. If the offender fails to affirm their previously provided address then the Facility Caseworker must file an affidavit describing the refusal with the State's Attorney who obtained the conviction, with a copy to the Vermont Crime Information Center (VCIC).
3. At least twenty-four (24) hours prior to release, the Facility Caseworker must file the *Vermont Sex Offender Registry Notification of Requirement to Register* form with VCIC. The offender's provided address should be listed under the "Current Home (911) Address" section of the form.
4. Facility Caseworkers shall assist offenders with the process of registering as a sex offender, unless the offender declines assistance.

## **Vermont Department of Corrections**

### **Administrative Rule on Determination of High Risk and Failure to Comply with Treatment for Purposes of Sex Offender Internet Registry**

**1. AUTHORITY:** 13 VSA Chapter 167, Subchapter 3, Sex Offender Registration; Title 13, §5401 to 5412; Act No. 157 of the 2003-2004 legislative session. The law requires sex offenders convicted in the State of Vermont after July 1, 1996, as well as those convicted in any state before July 1, 1996 who were supervised in the community by the Commissioner of Corrections as of July 1, 1996, to register with the Sex Offender Registry. The Sex Offender Registry has been established at the Vermont Criminal Information Center (VCIC) in the Department of Public Safety

**1.1** The law also requires, for purposes of the Sex Offender Internet Registry, that the Department of Corrections determine if an offender is high risk and in compliance or non-compliance with Department of Corrections' treatment expectations.

**2. PURPOSE:** To establish the process for the designation of high risk offenders and determination of offenders' compliance or lack of compliance with DOC sex offender treatment expectations.

### **3. DEFINITIONS**

**3.1 Commissioner:** Commissioner of Corrections.

**3.2 DOC:** The Department of Corrections.

**3.3 Department:** The Department of Public Safety (includes VCIC)

**3.4 Risk:** statutorily defined as the degree of dangerousness that a sex offender poses to others. Dangerousness includes the probability of a sexual offense.

**3.5 High Risk:** statutorily defined as a high degree of dangerousness that a sex offender poses to others. Dangerousness includes the probability of a sexual offense.

**3.6 Designation of High Risk:** indicates the Department of Corrections' belief that the offender poses a high degree of dangerousness to others.

**3.7 Sex Offender:** "Sex offender" means sex offender as defined in Vermont statute; reflected in 13 VSA chapter 167, subchapter 3, §5401 (10) as follows:

**3.7.1.** A person who is convicted of any of the following offenses:

- a. sexual assault as defined in 13 VSA §3252;
- b. aggravated sexual assault as defined in 13 VSA §3253;
- c. lewd and lascivious conduct as defined in 13 VSA §2601;
- d. sexual activity by a care giver as defined in 13 VSA §6913(d);
- e. an attempt to commit any offense listed in this subdivision.

**3.7.2.** A person who is convicted of any of the following offenses against a victim who is a minor:

- a. any offense listed in subdivision (3.7.1) above;
- b. kidnapping as defined in 13 VSA §2405(a)(1)(D);
- c. lewd and lascivious conduct with a child as defined in 13 VSA §2602;
- d. white slave traffic as defined in 13 VSA §2635

- e. sexual exploitation of children as defined in 13 VSA §2822-2828 chapter 64;
- f. procurement or solicitation as defined in 13 VSA §2632(a)(6); or
- g. an attempt to commit any offense listed in this subdivision; except that for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is under the age of 18.

3.7.3 A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction within the United States, including a state territory, commonwealth, the District of Columbia or military court, for a sex crime the elements of which would constitute a crime under subdivision (10) (a) or (b) of this section if committed in this state.

3.7.4 A visitor to Vermont who is in this state for a period of at least 10 consecutive days or 30 days during any calendar year and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal or tribal court, for a sex crime the elements of which would constitute a crime under this section if committed in this state.

**3.8 Sex Offender Internet Registry:** The sex offender registry is posted to the internet maintained by the Vermont Crime Information Center (VCIC) at the Department of Public Safety.

**3.9 Sex Offender Review Committee:** A committee of five (5) people appointed by the Commissioner of Corrections to determine if referred cases meet the designation of high-risk established in statute for purposes of internet registration.

**3.10 Sex Offender Treatment Programs:** Treatment programs that are contracted by DOC to provide sex offender treatment.

#### **4. DEPARTMENT OF CORRECTIONS DESIGNATION OF A HIGH-RISK SEX OFFENDER**

The Department of Corrections (DOC) may designate an offender as high risk, as defined in 13 VSA § 5401(16). For purposes of the Sex Offender Internet Registry, the Department must determine, by a preponderance of the evidence, that the offender poses a high degree of dangerousness to others. The DOC will assure that the assessment instruments used to determine sex offender risk reflect current best practice. This determination is made through the following processes for different categories of offenders:

**4.1 Offenders who are incarcerated:** No later than 24 weeks prior to an offender's anticipated release date, DOC staff will refer, in writing, sex offenders on their caseloads who they evaluate as high risk to the Sex Offender Review Committee (Committee) described in Section (5.4) below.



4.1.1 In making this initial referral to the Committee, DOC staff shall utilize current objective risk assessment instruments to identify or exclude a sex offender as high risk. DOC staff may also consider other appropriate factors relevant to the offender's risk to re-offend.

4.1.2 "Other appropriate factors" may include, but are not limited to, offender's age, physical conditions (such as sickness, age, etc.,) pattern of sexual offending, nature of sex offense(s), pattern of cooperation while under correctional supervision and recent behavior, recent threats, or expressions of intent to commit additional offenses.

#### **4.2 Offenders under Community Supervision:**

**4.2.1 Offenders Sentenced in Vermont :** Within 2 weeks and no later than 4 weeks of assignment DOC staff will refer, in writing, sex offenders on their caseloads who they evaluate as high risk to the Sex Offender Review Committee (Committee) described in Section (5.4) below.

**4.2.2 Offenders transferred to community supervision through the Interstate Compact.** Within 2 weeks and no later than 4 weeks of receiving all necessary paperwork DOC staff will refer, in writing, sex offenders on their caseloads who they evaluate as high risk to the Sex Offender Review Committee (Committee) described in Section (5.4) below.

4.2.2.1 In making this initial referral to the Committee, DOC staff shall utilize current objective risk assessment instruments to identify or exclude a sex offender as high risk. DOC staff may also consider other appropriate factors relevant to the offender's risk to re-offend.

4.2.2.2 "Other appropriate factors" may include, but are not limited to, offender's age, physical conditions (such as sickness, age, etc.) pattern of sexual offending, nature of sex offense(s), pattern of cooperation while under correctional supervision and recent behavior, recent threats, or expressions of intent to commit additional offenses.

**4.3 Sex offenders moving to Vermont:** If a sex offender convicted in another state but residing in Vermont is required to register with the Department of Public Safety, the Department of Public Safety may refer an offender to the Sex Offender Review Committee for a determination of whether the offender should be classified as high risk for purposes of the Sex Offender Internet Registry.

4.3.1 The Department of Public Safety will forward all necessary paperwork regarding the out of state conviction(s) including, but not limited to, affidavits and record checks.

4.3.2 Within 2 weeks and no later than 4 weeks of receiving all necessary paperwork, the Sex Offender Review Committee, will make a determination of high risk

**4.4 Sex Offender Review Committee Review:** No later than 4 weeks after receipt of the referral from DOC staff, the Sex Offender Review Committee will make a determination as to whether a sex offender will be designated as high risk for purposes of the Sex Offender Internet Registry. The Committee will utilize the objective risk assessment instruments, and any other appropriate factors it deems relevant, in its determination.

4.4.1 The Committee must determine by a preponderance of the evidence that the offender poses a high degree of dangerousness to others. "Dangerousness" includes the probability that the offender will commit a new sexual offense. The Committee, in its written decision, must make specific findings of fact to support its designation of an offender as high risk for purposes of the Sex Offender Internet Registry.

4.4.2 Written notification of the offender's designation of high risk will be sent to the DOC staff, the offender, and the Department of Public Safety no later than 5 work days after such a determination has been made. This shall serve as notification to the Department of Public Safety that a sex offender has been designated high risk for purposes of the sex offender internet registry.

4.4.3 Written notification of the Committee's decision – in cases where an offender has been determined to be high risk – will be sent to the victim of the offender upon request of the victim.

**4.5 Administrative appeal process.** An offender shall have an opportunity to appeal any determination made by the Committee.

4.5.1 An offender must make a written appeal to the Committee no later than 30 days of receipt of the Committee's decision.

4.5.2 No later than 30 days after receipt of such appeal, the Committee will conduct a hearing to determine the designation of high risk. The offender shall receive at least a 7 work day notice of the time, date and location of the hearing. The hearing shall be conducted pursuant to policies established by the Committee for such purposes, which shall give the offender and his or her attorney an opportunity to be heard and present relevant evidence. Such hearings may be conducted via video or telephone conferencing.

4.5.3 The Committee shall issue a written decision no later than 14 days after the hearing. A copy of this decision shall be forwarded to the offender, the Department of Public Safety, the victim - if written notice

was provided under Section 5.4.3 above, and the offender's supervising caseworker within 5 work days of such decision. This decision shall serve as notification to the Department of Public Safety that a sex offender has been designated high risk for purposes of the Sex Offender Internet Registry.

**4.6 Petitioning to change a high-risk designation.** An offender who has been designated high risk and who has exhausted his or her administrative remedies may petition the Sex Offender Review Committee for a change in his or her high-risk designation once every two (2) years, from the date the administrative remedies have been exhausted. Upon receipt of the petition, the Committee shall follow the same process and time frames as provided in subsections 5.4 and 5.5.

**4.7 Superior Court review.** Upon exhausting his or her administrative remedies, an offender who is designated as high-risk may appeal to superior court as provided in 13 VSA § 5411b(b).

**5. SEX OFFENDER REVIEW COMMITTEE:**

The DOC Commissioner shall designate all members of the Sex Offender Review Committee.

5.1 The Committee shall consist of five (5) members, composed of at least the Director of the DOC sex offender treatment program, the DOC Program Executive, a member from the Vermont Criminal Information Center, the Director of DOC or other Victim Service's and a Vermont Sex Offender Treatment Provider.

5.1.1 Each member shall serve a one-year term, which the DOC Commissioner may renew.

5.2 The Committee shall make its determinations based upon a majority vote.

5.3 The Committee may adopt procedures for its operation as necessary to comply with statute and DOC policy.

**6. NON-COMPLIANCE WITH DOC-RECOMMENDED SEX OFFENDER TREATMENT**

The Department of Corrections will assure that compliance criteria are based on current best practice. Non-compliance standards only apply to offenders who did not comply with treatment or were ineligible for treatment AFTER March 1, 2005.

**6.1 Non-compliance with sex offender treatment is defined as:**

6.1.1 Refusing treatment recommended by the DOC; or

6.1.2 Being ineligible for treatment by failing to meet the DOC sex offender treatment program admissions criteria; or

6.1.3 Failing to remain in and/or complete a sex offender treatment program recommended by the DOC.

## **6.2 Determination of Treatment Non-compliance.**

**6.2.1 Offenders released from confinement.** DOC staff shall determine if the offender is in compliance with a treatment program recommended by DOC no less than 90 working days prior to release. DOC staff will forward the non-compliance status of an offender to the Department of Public Safety along with the **Notification of Requirement to Register Form** and the **Vermont Sex Offender Registry Registration Form**.

### **6.2.2 Offenders under DOC supervision, but not incarcerated.**

**6.2.2.1 Newly Sentenced:** Newly sentenced offenders in the community who are initiating contact with a treatment provider will be given up to 60 days for the treatment provider to determine if the individual is engaged and in compliance with the recommended treatment.

**6.2.2.2 Currently on Community Supervision:** Within 30 days of this rule taking effect, all supervising caseworkers of offenders currently on community supervision will determine the level of compliance with recommended treatment for those who have not already been assessed.

**6.2.2.3** DOC staff will forward the non-compliance status of an offender to the Department of Public Safety no later than 5 work days after such a determination.

**6.3 Achieving Treatment Compliance:** An offender who has previously been determined to be in non-compliance with a sex offender program recommended by the DOC can come into compliance. This would occur upon successful participation in a sex offender treatment program (recommended by the DOC) for a minimum of 12 consecutive months. Upon meeting this requirement, the offender can request a change in status. Within 30 days of meeting the treatment compliance requirement, the offender must submit a letter from his/her sex offender treatment provider verifying the treatment compliance requirement. The offender shall submit this letter to the DOC.

**6.3.1** No later than two (2) weeks after receipt of such a letter, the DOC shall make a written determination of whether an offender has come into compliance.

**6.3.2** If an offender's status has changed while under DOC supervision, the DOC shall forward to the Department of Public Safety a written notice of the change in status no later than 5 work days after such a determination has been made.

**6.4 Offenders no longer under any DOC supervision.** An offender who has been determined to be in non-compliance with a DOC-recommended sex offender treatment

program, and is no longer under DOC supervision, may petition the Sex Offender Review Committee to change his or her non-compliance status only upon his or her completion of a treatment program recommended by the DOC. The process shall be as follows:

6.4.1 An offender must first complete a sex offender treatment program recommended by the DOC.

6.4.2 Upon completion of such a program, if the offender requests a change in status, he or she shall submit a letter to the Sex Offender Review Committee from his or her sex offender treatment provider verifying the treatment compliance requirement.

6.4.3 No later than 30 days after receipt of such a letter, the Sex Offender Review Committee shall make a written determination of whether the offender has come into compliance.

6.4.4 Within 5 work days of such decision, the Sex Offender Review Committee shall send written notification to the offender and the Department of Public Safety.

**6.5 Superior Court review.** Upon exhausting his or her administrative remedies, an offender who is determined to be in non-compliance with a sex offender program recommended by the DOC may appeal the Department's determination to superior court as provided in 13 VSA §5411b(b).